

**Analysis of the Different Models of Peace Support Operations and Forms of NATO
Involvement, as a Part of a New Security Architecture**

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(ABSTRACT)

The transition from the bi-polar to the multi-polar security system has brought dramatic changes in the world order. States that have been oppressed discovered an opportunity for independence. Citizens within States also have a renewed desire to shape the country they live in along new borders based on historical precedence, ethnic concentrations, or religious beliefs. Unfortunately, these new divisions have not been orderly, and in the process thousands of innocent people have either lost their lives or been displaced while conflicts rage.

The picture is even more complicated by the ongoing process of world globalization, which has led to the unprecedented movement of goods, people, ideas, challenges and threats, and therefore made countries much more interdependent.

Consequently, the promotion of peace and justice through collective action remains a relevant and urgent task. For this purpose, Peace Support Operations (PSOs) remain the most valuable international mechanism for containing and resolving conflicts and for building states, capable of becoming worthy members of the world community.

Clearly, NATO, as one of the key international actors in the field of international peace and security, cannot ignore the need for an effective conflict management capability.

Analysis of the role and function of NATO with regard to PSOs and the study of the theory of peacekeeping itself are the main topics of the current research.

The research consists of an introduction, three chapters and the conclusions.

The introduction provides a general overview of the major problem areas covered by the study project, defines the topics to be discussed and sets the main objectives of the research.

Chapter One is devoted to the history and evolution of the peace support operations and serves as a theoretical basis for the further parts of the research. It consists

of four sub-topics, reviewing the history, the legal basis and main developments of the peace support operations: from traditional peacekeeping to second generation peacekeeping and mixed operations. Furthermore, it studies the political processes that lead to the transformation of the objectives of the PSOs, evaluates the current situation and future trends.

Chapter Two describes the new challenges and developments, which have taken place in recent years. It examines how these challenges effect the traditional principles of the peacekeeping operations. Moreover, it analyzes the reasons behind the appearance of a new concept of humanitarian intervention, its legal basis, its norms and political modalities. Furthermore, it illustrates the necessity of a regional approach to intra-state conflicts, it examines NATO-UN relations and studies the influence of NATO military campaign in FRY on the future development of the concept of humanitarian intervention, and international relations in general.

Chapter Three focuses on possible future developments in the field of peace support operations. Taking into account new challenges posed by ongoing process of globalization, world community faces the problem of not only containing the conflicts, but building long lasting, credible peace. Such task sets necessity of further developments of the peace support concept and transition from the peacekeeping to the state-building. Thus, the Chapter analyzes concept and essential elements of a state-building, describes possible directions and necessary steps. Moreover, it tries to find possible division of labor between NATO and other international organizations in this sphere and explores some practical functions which NATO can carry out in a state building process, such as providing security and force protection, civil-military relations, logistic support and assistance in a social sphere.

The research ends with the conclusions summarizing findings and most important observations.

Aggregate capacity of the research is 64 pages.

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FINAL REPORT

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INTRODUCTION

In a modern world with a process of globalization, leading to the unprecedented movement of goods, people, ideas, challenges and threats, countries are much more interdependent. Developed states, that have been able to capitalize on globalization, have created unparalleled prosperity within their own borders. Those states have realized that in order to continue improving world living conditions they need security and stability. Therefore, developed countries are naturally extremely concerned about maintaining a stable and secure world, by preventing conflicts or at least containing them as fast as possible. However, in countries where ethnic and cultural tensions have spanned hundreds of years, simply stopping the violence and unrest is not enough to secure a peaceful outcome and thus provide the foundation for creating a stable state. Once the violence has been contained, the mission of building a lasting peace must be put in place as soon as possible in an attempt to ensure that anarchy and disarray doesn't re-occur.

Traditional peacekeeping, with its narrow scope of objectives and functions is not suitable for this purpose. Such complex challenge sets on agenda necessity of a broader approach and transition from the peacekeeping to the state-building.

List of tasks for the international community involved in the state-building process could include complex missions like: organizing and supervising free and fair elections, managing arms flows and demobilizing troops, administering government functions, controlling rehabilitation of refugees and disarmament, monitoring human rights obligations, assisting in the delivery of humanitarian relief, promoting national reconciliation, setting up transitional administrations, helping with establishment of police force and etc.

Obviously, such complex missions can't be met by any single state or international organization. Therefore, it's absolutely necessary to elaborate a model of "division of labor" among different international actors such as the UN, NATO, the OSCE, the EU, numerous NGOs and etc. Such division should be based on comparative strengths of each of those organizations in order to achieve the most effective results.

The concept of state-building itself, as well as a model for the multi-dimensional involvement into the crisis management are still not clearly worked out. Contribution to the clarification of these issues constitutes the purpose of this research.

Main objectives of the following research are to:

- Review the history, legal basis and main developments of the Peace Support Operations (PSOs), analyze political processes leading to the transformation of the objectives of the PSOs, evaluate current situation and future trends;
- Examine roles of the main international players in the field of international peace and security, study NATO-UN relations and find possible division of labor between NATO and other international organizations;
- Analyze role and function of NATO with regard to PSOs, its role in the development of the concept of the humanitarian intervention;
- Study concept and essential elements of a state-building, explore some functions, which NATO can carry out in a state-building process.

CHAPTER 1: HISTORY AND EVOLUTION OF THE PEACE SUPPORT OPERATIONS¹

Legal basis for the Peace Support Operations

Peace support operations (PSOs) have been an instrument of foreign and security policy since the early 19th century², but have gained real importance, legitimacy and institutional basis with the end of the Second World War, after the establishment of the United Nations.

From modern prospective, history of peacekeeping counts 53 years. The first peacekeeping operation was conducted by the United Nations in June 1948 in the form of military observer mission. It was called United Nations Truce Supervision Organization in Palestine (UNTSO) and was originally mandated to supervise the truce ordered by the Security Council to end the first Arab-Israeli war. Later, similar missions were set up in Kashmir and other conflict areas.

It is necessary to notice that a concept of peacekeeping is not clearly defined in the UN Charter. Peacekeeping operations are practical mechanism devised to contain armed conflicts and facilitate their resolution by peaceful means. This mechanism was developed by the UN at the initial stage of the Cold War, because its original collective security and peace enforcement system, based on the authority of the Security Council and major power consensus, became unworkable as a result of the increasing disagreement between the two superpowers. It was developed progressively and

¹*The views expressed below are personal and do not necessarily reflect those of the Government of Georgia or any other organization.*

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²*For example, joint Austrian, British and French naval forces intervened in Lebanon in 1840 and 1860; joint mission, using land forces, police, administrative and judiciary elements was undertaken by all major European powers to pacify Crete; international naval operation was conducted and ground force was deployed to create and guard Albania in 1913; plebiscite in Schleswig was supported by British and French forces in 1920; plebiscite in German Saarland was supported by the British, Italian, Dutch, Swedish forces and Czech police in 1934-35, and etc.*

pragmatically, much due to the vision and efforts of the UN then Secretary-General Dag Hammarskjöld and other important international figures such as Ralph Bunche (USA) and Lester Pearson (Canada).

There is a wide spectrum of possible measures in the field of crisis-prevention and crisis-management, not all of which are foreseen by the UN Charter. Chapter VI is focused on existing disputes, and before having to consider the means available under that Chapter, the UN can resort to early warning systems, information gathering, fact-finding missions, humanitarian assistance programs and other forms of preventive diplomacy, none of which are mentioned in the Charter. A number of these “pre-chapter VI” measures can be initiated by the Secretary-General in accordance with Article 99 of the Charter, while others can be undertaken by the Security Council or the General Assembly under a less specific mandate.

Between the tasks of conflict prevention and peacekeeping lie the attempts of handling existing disputes by bringing disputing parties to agreement by peaceful means. As parties to the UN Charter, member states are under an obligation to resolve their disputes peacefully. Article 33 (probably the most important article in Chapter VI) enumerates a number of dispute settlement methods from which parties can choose – negotiations, mediation, conciliation, arbitration, judicial settlement, resort to regional arrangements, or other peaceful means – states have to choose something in order to fulfil their obligation to settle the dispute. If the parties fail to settle in by the means indicated in Article 33, they are under an obligation to refer it to the Security Council. And if they fail to reach a peaceful solution, with a resulting armed conflict, they are under a customary law obligation to end the armed conflict as soon as possible, essentially through the methods and means described in Article 33.

Chapter VI gives a prominent role of the Security Council in seeking solutions to international disputes. The council shall, when it deems necessary, call upon the parties to settle their dispute by the means referred to in Article 33. The obligation of Article 33 would thereby be reinforced and the corresponding demand of the Security Council would be of no less binding a nature than Article 33 itself. The Council may also recommend appropriate procedures or methods of adjustment. If the Council deems that continuance of the dispute is likely to endanger the maintenance of international peace

and security, it may recommend specific terms of settlement. In practice, however, only those means and methods of dispute settlement which are accepted by the parties have a chance of being successful. Although Chapter VI contains legal obligations for states, its peacemaking strategy is based upon the consent of parties in dispute.

From strict point of view, PSOs are not foreseen under either Chapter VI or Chapter VII of the UN Charter; they fell somewhere in between and not surprisingly the unwritten Chapter VI^{1/2} has been suggested (by scholars, such as Antonio Cassese and Ove Bring) as their legal basis. It is submitted that this “VI^{1/2}” perception³ is legally defensible and politically useful; legally defensible because, even if based on consent, PSOs are a more ambitious level of UN involvement than anything provided for in Chapter VI; politically useful because it shows that innovations, even without explicit textual support, can be legitimized under the system of the Chapter VI if they fulfil the purposes of the United Nations. Innovations per se should not be considered controversial, particularly since we may have to rely on them in the future (we’ll come back to this point later, with regard to a concept of the humanitarian intervention and Kosovo case.).

For example, new interpretation of the UN Charter has been introduced during the Korean War in June 1950⁴. The adoption of Security Council Resolutions 82 and 83 (1950), in the absence of the Soviet Union (which was boycotting the Security Council that time to protest against a recent decision of a General Assembly not to recognize newly established government of communist China), was seemingly in contradiction to the wording of Article 27(3) requiring “the concurring votes of the Permanent Members” in order to reach a valid decision. However, by 1971 the International Court of Justice in

³ However, some politicians and scholars sharply criticize the “VI^{1/2} perception”. They take the view that peacekeeping should be seen as directly deriving from Chapter VI, more specifically as one of those “other peaceful means” that parties to a dispute may resort to in order to solve their dispute under Article 33 of the Charter. The problem with this interpretation is that Chapter VI deals with “Pacific Settlement of Disputes” just as Article 33 deals with parties “seeking a solution” to their dispute, while peacekeeping has been defined as a technique that does not lead to a settlement or solution per se, but a “technique that expands the possibilities for both the prevention of conflict and the making of peace”.

⁴ However, it can be argued that operation in Korea wasn’t standard UN peacekeeping operation. It’s establishment was authorized on the proposal of the United States shortly after the invasion. The force in Korea was, and still is, command and controlled by the United States and it used force on a large scale as enforcement action.

its advisory opinion on Namibia concluded, that the practice of abstention in the Security Council can be interpreted by the Council and its member states as not preventing decisions being made.

The UN Charter was also interpreted in an unorthodox way in November 1950, when there was a political need to bypass the Security Council, paralyzed by the veto. The General Assembly adopted the Uniting for Peace Resolution, which extended the competence of the Assembly, contrary to the wording of Article 11(2) of the Charter, which prevents the General Assembly from recommending “action” in matters related to the maintenance of international peace and security. This new interpretation was later reversed when developing countries started to dominate the UN, but the procedural side of the Resolution (the possibility to call immediately an Emergency Session of the General Assembly) is still applicable.

When the Uniting for Peace Resolution was adopted, the Swedish Foreign Minister, Mr. Uden, declared in the General Assembly that this was a case where the “letter of the Charter had ... been exceeded in practice, but this was a felicitous and happy development of the Organization. Its Charter, like all other Constitutions, must develop so that it would not become a dead letter”.

Such innovative Charter related practice during the Suez crisis in 1956 (when Israel and two major powers, France and the UK invaded Egypt and occupied large portions of its territory) had two dimensions. First, as the French-British veto power was blocking the Security Council, the Council, as a procedural matter, used the Uniting for Peace precedent and called for an Emergency Session of the General Assembly. Second, this session was used by the secretary-general Dag Hammarskjöld and the Canadian Foreign Minister Lester Pearson to introduce the concept of the interposition of a peacekeeping operation (PKO) as a way out of the political crisis. The resolution of this major emergency required the negotiated withdrawal of the invading forces and, following the completion of the withdrawal process, the establishment of a buffer zone between Egypt and Israel. To achieve these objectives, on November 7, 1956, the General Assembly adopted Resolution 1000 (ES-1) which established the United Nations Emergency Force in the Middle East (UNEF). UNEF played a key role in the

negotiations leading to the resolution of the Suez crisis and has served as a model for all later peacekeeping forces.

When the United Nations Emergency Force (UNEF) was established, Hammarskjold considered it as a new development. “It is” he said, “certainly not contrary to the Charter, but it is in a certain sense outside the explicit terms of the Charter”.

Although UN Charter is an excellent document, it can't accommodate all aspects of actions, necessary for the resolution of conflicts and disputes. In this areas there had been (and still is) a need for supplementary norms or modifications based upon the practice of the UN or its members. As a result, the UN Charter had been interpreted from the very beginning in a flexible and dynamic way to fit the political needs of the world community. The relationship between political requirements and legal possibilities, and the search for innovative solutions was new, positive development, leading to the establishment of peacekeeping operations.

In contrast to the Uniting for Peace mechanism the concept of peacekeeping has been of lasting and fundamental value to the international community. Although UN observer missions had been fielded in 1948 and 1949, the deployment of armed troops to assist in the implementation of agreements reached between the UN and parties to a conflict added a new dimension to international relations. To govern these operations, Hammarskjold laid down main principles of consent, impartiality and non-use of force (except in self-defense).

Basic Principles and Developments of Traditional Peacekeeping Operations

Up until 1988 what we now call “traditional peacekeeping” had prevailed. The traditional function of PKOs was to “support peacemaking efforts by helping to create conditions in which political negotiations can proceed”. Obvious examples are the monitoring of cease-fires, the controlling of buffer-zones, and etc.

There are at least two sub-types of traditional PKOs: unarmed military observer groups, such as the United Nations Truce Supervision Organization (UNTSO) in the Middle East, and armed infantry-based forces with the task of controlling territory in order to achieve effects conducive to peacemaking, e.g. the United Nations

Peacekeeping Force in Cyprus (UNFICYP) and UNEF II with regard to the Suez Canal and Sinai.

The principles applied to the early UN peacekeeping operations may be summarized under six headings:

1. **Consent** – the peacekeeping operations were based on consent. Their deployment in an area of conflict required the consent of the host government and the other main parties concerned. The principle of consent also applied to the troop-contributing governments, which have been supplying the required military personnel on a voluntary basis;
2. **Impartiality** – UN peacekeepers sent to the area of conflict were obliged not to take sides in that conflict and support the interests of one of the parties against those of the other;
3. **Non-use of force** – the UN peacekeepers were not authorized to use force except in self-defense. They had to act with restraint at all times and seek to carry out their mission by negotiation and suasion and not by coercion;
4. **International character of the conflict** – the peacekeeping operations were normally set up to deal with conflicts of an international character, involving governments and had the backing of international community;
5. **Role of the Secretary-General** – while peacekeeping operations had to be authorized by the Security Council (or exceptionally by the General Assembly) and operated by UN military command, they were always directed on a day-to-day basis by the Secretary General;
6. **Multinationality** – the force was always multinational in composition, selected in consultation with the parties to the conflict and traditionally excluded troops from the permanent five member states of the security council.

Traditional peacekeeping operations were essentially non-violent and impartial. UN presence meant assistance to the parties to a conflict in preventing a recurrence of fighting when they had agreed to a cease-fire. Whether in a form of a military observer mission or as a peacekeeping force, their main tasks included monitoring cease-fires, supervising the withdrawal of occupation forces or manning buffer zones between enemy

armies. Peacekeeping operations couldn't resolve the political problems as such, but, by stopping the fighting and stabilizing the situation in the conflict areas, they created favorable conditions for political settlements by negotiation and other peaceful means. That was why, to the extent possible, they were combined with parallel political efforts. Indeed, the first peacekeeping operations were created to assist and facilitate the peace negotiating process, and this has remained their main objective.

During their formative phase, the UN peacekeeping operations were best described (by Walter Lipmann) as based on a new, bold and sublime concept, the concept of the soldier of the peace, who was sent to a conflict area not to wage war, but to promote peace, not to fight enemies, but to help friends.

The United Nations was able to set up 13 peacekeeping operations during the Cold War period (in various parts of the Middle East, in Kashmir, Congo, Cyprus, and Dominican Republic). These operations all dealt with international conflicts, although some of them were also involved in conflicts of an intra-state nature, either because the United Nations was driven into internal political struggles (as in Congo, in the 1960s) or because the intra-state conflicts had certain international aspects (as in Cyprus since 1964 and in Lebanon since 1978).

Most of those operations were able to carry out their mandates with the cooperation of the parties concerned, but there were some setbacks. In 1967, the United Nations Emergency Force had to be withdrawn from Gaza and the Sinai at the demand of Egypt, the host government, and its withdrawal was soon followed by another war in the Middle East. The presence of the United Nations peacekeeping forces failed to prevent the military intervention of the Turkish Army in Cyprus in 1974 and the invasion of the Israeli troops in Lebanon in 1982. And the United Nations operation in Congo had many problems with various internal factions in the country as a result of the secession of Katanga (now Shaba) and the collapse of the central government.

These setbacks were linked to the nature of traditional peacekeeping. Lacking enforcement powers, traditional peacekeeping operations had certain basic limitations. For one thing, the United Nations couldn't set up such operations in conflict areas without the consent of the parties concerned, even if there was a clear and urgent need to do so.

Secondly, even after a peacekeeping operation had been set up, its effectiveness was contingent upon the cooperation of the parties concerned. The required cooperation had usually been available when the United Nations dealt with international conflicts between governments, because when legitimate governments accept UN peacekeeping operation, they generally cooperate with it⁵. Unfortunately, there had been some exceptions. When a conflict was particularly complex and involved not only legitimate governments, but also internal factions and irregular armed elements, or when the peace negotiating process was hopelessly deadlocked, then not all the parties concerned had been able or willing to give the United Nations the cooperation it required.

And thirdly, during the Cold War, the attitude of the two superpowers had a crucial impact on the performance of traditional peacekeeping operations. Experience has shown that in order to set up such operations, the United Nations had to secure not only the consent of the main parties directly concerned, but also the support, or at least the acquiescence, of the two superpowers. In the black years of the Cold War, the rivalry between the two superpowers often prevented the Security Council from taking effective action to contain and control conflicts. The Soviet Union viewed UN peacekeeping operations with considerable suspicion until the 1970s. However, the negative rivalry between the two superpowers was somehow balanced by a nuclear fear. Both superpowers knew that with the nuclear weapons they had, a direct military confrontation between them would have incalculable consequences and they accordingly sought to prevent it, often by using the UN peacemaking and peacekeeping mechanism.

However, despite those difficulties, UN peacekeeping operations were an important stabilizing factor during the Cold War; they contained several potentially dangerous conflicts and insulated them from superpower rivalry.

⁵ *One of the best examples of such cases is the United Nations Disengagement Observer Force (UNDOF) deployed on the Golan Heights to separate the Israeli and Syrian armies. With only about 1000 soldiers, it keeps the peace most efficiently in this strategic area because both Israel and Syria cooperate with it.*

End of the Cold War: Second Generation of Peacekeeping Operations

With the end of the Cold War, the international situation has changed dramatically. The turning point was the December 1987 summit meeting between the presidents of the Soviet Union and the USA in Washington, D.C. During that meeting the two leaders signed the historic treaty on the elimination of intermediate-range nuclear missiles. They also agreed to undertake joint efforts to contain regional conflicts.

This led to the revitalization of the Security Council and a revival of the UN peacekeeping activities. Within the next two years, in 1988 and 1989, five new peacekeeping operations were initiated by the Security Council: in Afghanistan (to verify the withdrawal of Soviet forces), in Iran-Iraq (to supervise the cease-fire that ended their eight-year-old war), in Angola (to verify the withdrawal of troops), in Namibia (to supervise the cease-fire and the elections that lined the way for the country's peaceful accession to independence), and in Central America (to monitor the peace agreement concluded by the five republics of the region). All those operations dealt with international conflicts on the basis of agreements negotiated by the parties concerned, under UN auspices with support of the two superpowers, and all of them were successful. The Nobel Peace Prize was awarded to UN peacekeeping forces in December 1988.

All those, as well as some other operations could be evaluated as a second generation of the peacekeeping with extended and more ambitious mandates. Operations have been set up to support the implementation of comprehensive agreements between the UN and/or the parties to a conflict. The new tasks of peacekeepers have included:

- Organizing and supervising free and fair elections (Namibia, Mozambique);
- Monitoring arms flows and demobilizing troops (Central America);
- Supervising government functions, rehabilitation of refugees and disarmament (Cambodia);
- Monitoring human rights obligations (El Salvador, Cambodia);
- Assisting in the delivery of humanitarian relief (former Yugoslavia, Somalia, Mozambique).

As it's clear, the scope of peacekeeping activities greatly increased. While most peacekeeping operations established during the Cold War had had mainly traditional

peacekeeping tasks of a military character (such as the supervision of cease-fires or the control of demilitarized buffer zones), many new ones were multi-dimensional and combined traditional peacekeeping tasks with various activities of a political and/or humanitarian nature. And whereas the original traditional peacekeeping operations had been designed to contain international conflicts, the new ones were increasingly involved in internal conflicts within independent and sovereign states.

Although these “expanded” PKOs had certain degree of involvement in the domestic affairs of host states, they were not based upon any sort of enforcement mandate⁶; rather, they were consistent with the traditional order of peacekeeping where consent remained the basic requirement. It was therefore noted with some interest that Boutros-Ghali in his Agenda for Peace of 1992, referred to PKOs as a practice that had so far been conducted with a consent of the parties concerned⁷.

By early 1990, there was a general feeling of euphoria at the United Nations. Many believed that freed from the Cold War constraints, the United Nations could from now on effectively ensure the maintenance of international peace and security through enhanced peacemaking and peacekeeping efforts. But this euphoria was short-lived. True, the Security Council has been revitalized and could set up peacekeeping operations almost at will to contain various types of armed conflicts, both international and internal.

But along with these positive developments, there has been a downside. Several regional conflicts remained unresolved and, more serious, the negative stability of the Cold War disappeared. Ambitious local leaders were no longer tightly controlled by the superpowers and many ancient ethnic conflicts, long contained during the Cold War, have re-emerged with savage violence in Eastern Europe, Caucasus, Central Asia and Africa.

⁶ *Of a special consideration is a case of Iraq’s invasion of Kuwait on 2 August 1990. On the basis of the Security Council’s authorization, a coalition force led by the United States took intensive military action against Iraq in January 1991 and, after a brief war, expelled the Iraqi forces from Kuwait.*

While the Gulf War effectively redressed an act of aggression, it raised a number of questions. It was not carried out in strict accordance with the provisions of Chapter VII of the Charter, for it involved not a UN force under UN command, but a coalition force under US command, acting with the authorization of the Security Council. Like the operation in Korea, the coalition force was a pragmatic application of Chapter VII of the Charter.

⁷ *Further developments, which led to the establishment of mixed operations with enforcement elements, are described in the next part of the research.*

The proliferation of internal conflicts, combined with the revitalization of the Security Council, produced a further expansion of peacekeeping operations between 1991 and 1994. Seventeen new operations were established during that period. Military observer missions of various sizes had been set up in El Salvador, Western Sahara, Liberia, Georgia⁸, Tajikistan, in the Aouzou Strip in Chad and along the Rwanda-Uganda border; larger peacekeeping forces deployed between Iraq and Kuwait and in Cambodia, Somalia, Angola, Mozambique, the former Yugoslavia (Croatia, Bosnia and Macedonia), Rwanda and Haiti.

But this dramatic expansion created new problems. The United Nations became over-extended and remorsefully short of personnel, equipment and financial resources necessary to meet the growing demands of peacekeeping. Even more serious, the traditional principles of consent, impartiality and the non-use of force except in self-defense, which had been laid down for peacekeeping operations involved in international conflicts, became inadequate when the UN was confronted with internal conflicts and civil war situations.

The performance of the peacekeeping operations established between 1991 and 1994 was mixed. The two operations dealing with “traditional-type” international conflicts, one manning the demilitarized zone between Iraq and Kuwait after the Gulf War and the much smaller operation supervising the withdrawal of the Libyan administration and forces from the Aouzou Strip in Chad, carried out their mandates according to plan. The preventive deployment of UN peacekeepers in the Former Yugoslav Republic of Macedonia was successful in avoiding possible clashes between Albanians and other ethnic groups in that country. The more complex operations in El Salvador, Mozambique and Cambodia could also be considered as successful since they helped to end civil wars in those countries and promoted national reconciliation through the holding of free and fair elections (although the situation in Cambodia deteriorated again after the withdrawal of the UN operation).

⁸*In S/RES/934 of 30 June 1994, the deployment of a CIS peacekeeping operation to monitor the cease-fire in Georgia, alongside with the pre-existing UN observer mission (UNOMIG), was noted by the Security Council. The military component of the CIS force was exclusively Russian, with six other CIS members contributing non-militarily.*

But in other cases, the peace process was delayed or even collapsed. Confronted with heavily armed internal factions, guerilla movements and irregular forces in some complex civil war situations, unarmed military observers or the lightly-armed UN troops, acting under the principles of consent and the non-use of force, could no longer carry out their peace mission.

Mixed Operations: From Peacekeeping to Peace-Enforcement

New developments in the concept of the PKOs could be said to have emerged in Bosnia and Somalia, namely operations that started as peacekeeping but were later mixed with elements of peace-enforcement (UNPROFOR) or transformed into peace-enforcement in support of humanitarian actions (UNOSOM II).

In 1992 the UNPROFOR peacekeeping operation in Bosnia was given some specific Chapter VII authority to assist in the delivery of humanitarian relief and the protection of “safe areas”⁹. In 1993, the Security Council decided to give UNPROFOR some additional enforcement authority, this time in the context of the protection of its own personnel.

In dealing with this deepening crisis in Somalia, the Security Council established in May 1993 the UN peacekeeping force endowed with enforcement power under Chapter VII of the UN Charter. In addition to ensuring a secure environment for the delivery of humanitarian assistance, the UN operation in Somalia was mandated to promote national reconciliation and rehabilitation and the disarming of various Somali militias, by force if necessary.

The UN operation in Somalia was withdrawn in March 1995, with its mandate largely unfulfilled. The one in Bosnia was terminated except for a much smaller civilian police mission, and its peacekeeping tasks taken over by a NATO-led force in December

⁹ *A small traditional peacekeeping operation was initially deployed in Bosnia in June 1992, with only limited humanitarian objectives. As civil war intensified, the Security Council gradually expanded the operations mandate, including the establishment in March 1993 of UN-protected safe areas in six Muslim enclaves besieged by Bosnian Serb armed forces. But the operation was not given adequate resources and as a result, in July 1995 Bosnian Serbs overran two safe areas, killing large numbers of Muslim civilians.*

1995, after peace accords had been concluded between the warring parties at Dayton under US auspices.

The setbacks in Somalia, Bosnia and Rwanda ushered in a period of retrenchment of UN peacekeeping activities¹⁰. The total number of UN peacekeepers had declined from more than 70,000 as of December 1994 to about 14,500 as of July 1998¹¹.

Such retrenchment of UN peacekeeping operations was due mainly the reason that the United Nations had been increasingly involved in internal conflicts within independent and sovereign states, but its peacekeeping operations, based on the principles of consent, impartiality and non-use of force (except in self-defense) and originally designed to deal with international conflicts involving governments, had found difficult to carry out their mission in the volatile environment of intra-state conflicts.

In order to deal with this difficulty, at the initial stage the UN made attempts to change mandate of some peacekeeping operations in action – legally, if the mandates for enforcement are given under Chapter VII of the UN Charter, the operations by definition don't require the consent of the parties concerned. From the first look, this could solve mentioned problem upon dealing with intra-state types of conflicts.

However, such “mixed” operations and immediate change of mandate from peacekeeping to the peace-enforcement created new problems. Since Chapter VI is consent-based and Chapter VII is not, mixed operations run into difficulties due to the loss of impartiality – an essential requirement for obtaining the co-operation of the parties to a conflict. As a result, UN peacekeeping forces were not able to prevent and stop tragedies in Bosnia and Somalia.

¹⁰ *The Somali tragedy had dramatic impact on a further development of peacekeeping: in the face of indignant American public reaction, President Clinton announced that all US troops would be withdrawn from Somalia by the end of March 1994. Later, he issued Presidential Decision Directive 25 (PDD25) of 3 May 1994, containing new policy directives according to which the United States would support and participate in UN peacekeeping operations only if their objectives were well defined, adequate resources were available, exit strategy was in place, and the operations served US national interests.*

¹¹ *There have been only two genuinely new peacekeeping operations in this period: In January 1997, the Security Council authorized a military observer mission to supervise the cease-fire in Guatemala and, in April 1998, a UN mission replaced the Inter-African peacekeeping operation in the Central African Republic with the mandate to assist in the maintenance of security and stability in that country.*

This does not mean that enforcement measures in support of humanitarian objectives, or to protect the mission and its personnel, should be avoided. But such action has to be conducted as a separate Chapter VII operation in order not to risk the lives of peacekeepers who, as a rule, are not equipped or otherwise prepared to deal with a situation that escalates into violent conflict. Mixed operations are only advisable if, at the time of establishing the peacekeeping operation, peace-enforcement needs were foreseen and a decision was taken to grant the force commander the necessary military resources. But even so, the original purpose of the PKO – to initiate a process of cooperation through peaceful measures – would have to be abandoned. The introduction of enforcement measures would create a new situation, and the efforts of peacemakers would probably have to be started from scratch.

In drawing lessons from the UN experience in Somalia and Bosnia, in his 1995 “Supplement to an Agenda for Peace“, the then Secretary-General made the following important remark:

“In reality, nothing is more dangerous for a peacekeeping operation than to ask it to use force when its existing composition, armament, logistic support and deployment deny it the capability to do so. The logic of peacekeeping flows from political and military premises that are quite distant from those of enforcement; and the dynamics of the latter are incompatible with the political process that peacekeeping is intended to facilitate. To blur the distinction between the two can undermine the viability of the peacekeeping operation and endanger its personnel.”

Of course, this doesn’t mean, that mixed operations are impossible from either a legal or a military point of view. The Security Council could simply decide that a mixed operation is appropriate and match the new mandate with the relevant military resources. Nor is to prove that peacekeeping operations should never be transformed into the peace-enforcement operations. But as has been pointed out, peacekeeping and peace-enforcement can never be seen as “adjacent strategies on a continuum, permitting automatic transition from one to the other”¹².

¹² *The act of becoming a combatant, as happened in Somalia, became known as “crossing the Mogadishu line”.*

It the early 1990s there was a clear trend from peacekeeping to the peace-enforcement. But soon the UN and its member states became too cautious and selective with regard to collective action. The trend was reserved, from peace-enforcement back to peacekeeping (in Bosnia to a form of regional peacekeeping) and regional action has taken over completely.

CHAPTER 2: NEW CHALLENGES AND DEVELOPMENTS

New Challenges vs. Traditional Principles

Dramatic changes in the nature of the post Cold War conflicts and shift from the inter-state to intra-state clashes led to the emergence of new challenges for the performance of effective peace operations. In this regard it could be worthwhile to look how traditional principles, designed for international conflicts and official governments work in case of intra-state conflicts with a number of non-state actors.

An argument continuously put forward in the context of peace operations is one related to the obligation of neutrality and impartiality. Consent from all parties to the conflict is a necessary precondition before any peacekeeping troops can be deployed. The impartiality of peacekeepers is necessary to retain the confidence of the parties concerned, since PKOs as a crisis management technique are based upon cooperation and not enforcement.

It could be argued, that this argument has been overstated. Indeed, it is true that UN impartiality in the eyes of the local population is essential for any peacekeeping operation. Success requires local support. But impartiality is only an argument for continuously linking an ongoing peacekeeping operation to consent. Impartiality is thus an argument against mixed operations (some catastrophic results arising from the loss of local support has been already described in the previous Chapter). It is not an argument against completely moving an operation from Chapter VI to Chapter VII of the UN Charter.

Any decision to cross the line from peacekeeping to peace-enforcement should be made only after all relevant factors have been considered and balanced. Consent and impartiality will form a part of such decision but should not be determinative of it. Charter VII is neither based upon consent nor impartiality; it is based upon the need for the United Nations to take a position and enforce that position (against any member state or other international actor) if this is necessary for the maintenance of international peace and security.

The United Nations shall also, under its own Charter, promote and defend certain values like human rights. This may imply a stand against those groups or governments that violate human rights and humanitarian law in such a serious and massive way that they (under the innovative but logical interpretation of Article 39 of the UN Charter) constitute a threat to the international peace and security and therefore, enforcement action could be taken to remove that threat. In such situations the United Nations can't be impartial. Consequently, nor can be its member states be impartial or neutral, as they are obliged under Article 2(5) of the Charter to give the United Nations every assistance in any action it takes in accordance with the UN Charter.

It is difficult to agree with the argument of Boutros-Ghali in the "Supplement for an Agenda for Peace", that the use of force in the Bosnia operation (although authorized under Chapter VII) allowed the United Nations to remain neutral and impartial between the warring parties, since there was no mandate to stop the aggressor or impose a cessation of hostilities. In reality, any use of force will be directed against one or more parties to the conflict. Moreover, in most cases the relief of a particular population is contrary to the war aims of one or other of the parties. Any operational task of protecting humanitarian assistance during warfare, protecting civilian population in the safe areas, or protecting the mission against armed interference, will conflict with the principle of impartiality if and when force is actually used.

Being designed during the Cold War period and suited mainly for the international conflicts, principles of consent and impartiality often don't fit the pattern of necessary requirements for the resolution of intra-state conflicts. Moreover, it can be argued, that for intra-state conflicts these principles limit the flexibility necessary for the conflict resolution and give certain degree of international recognition to different secessionist and separatist regimes, warring fractions, guerilla movements and terrorist groups by standing them on the equal feet with the official governments and requesting their consent for the international involvement. This can make peace operations political hostages in the hands of the above non-state actors. In addition, possibility to influence international political decisions and therefore, gain certain degree of international legacy (which is often very important in the eyes of local supporters) can serve as an incentive

for those groups to keep the existing situations longer, leading, quite paradoxically, to the stagnation in the conflict resolution.

Therefore, in case of intra-state conflicts, form of peace operation should be selected very carefully. In case of peacekeeping, the operation can be used by different local groups (especially secessionist movements and separatist regimes) for the preservation of the status quo and “freezing” of the conflict. Good example of such “frozen” conflict represents situation in Abkhazia, Georgia, where existence of the CIS peacekeeping operation and the UN observing mission (UNOMIG) is used by the Abkhaz separatist regime for the maintenance of the status quo.

Alongside with this, it is clear that peacekeeping itself is a consent-based technique of the conflict resolution. Any clash with local population or warring parties will require change of mandate and transformation of peacekeeping operation into peace-enforcing, with all negative effects of the mixed operations.

Therefore, in order to settle intra-state conflicts effectively, there are two ways: to launch a peacekeeping operation, but only as a part of broader approach and in a package with active diplomatic/political efforts to move towards conflict resolution; or to use enforcement mandate from the very beginning.

The latter point rises the necessity of further developments in the field of peace-enforcement activities.

Humanitarian Action: Norms of Intervention and Non-Intervention

Studies in international relations often put together the concepts of intervention and sovereignty. If you had intervened, you have infringed upon sovereignty, or conversely, if you hadn't violated sovereignty, there is no intervention.

This approach could be useful to intervening politicians, because they could themselves define what is sovereignty and what is not intervention. When President Woodrow Wilson intervened in Mexico in 1914, he defined sovereignty so as to make a distinction between government and people: sovereignty was defined as the sovereign authority of the Mexican people and not of the Mexican government. The sovereignty of people was not infringed upon in 1914. Consequently, there was no intervention.

Under the international law of the Cold War, when the dogma of sovereignty was stronger than today, the intervention was forbidden, unless consent was given by the Government in question. Under current international law, it may be lawful to intervene even if sovereignty is infringed upon. Today, the Security Council interprets the UN Charter in a more flexible way.

According to the Article 2(7) of the Charter, intervention in domestic affairs by the United Nations is prohibited, unless there is a Chapter VII situation. By defining unlawful intervention, the Charter has also defined what is permitted intervention.

Recent interpretations and applications of Chapter VII symbolize much of the dynamic nature of the UN Charter. The door-gate to the Chapter VII and the enforcement action, Article 39, has been widened due to the flexible interpretation of the concept of “threat to international peace and security”. This crucial concept has in the practice of the Security Council included internal persecutions of the minorities with “spill over” security risks for neighboring countries (Resolution 688 on Northern Iraq), humanitarian crisis in failed states (Resolution 794 on Somalia), and humanitarian/democratic crises in almost failed states (Resolution 940 on Haiti). As a consequence of this flexible interpretation of Article 39, the exception to be found in Article 2(7) of the Charter, only admitting UN intervention in the domestic affairs of States after a Chapter VII decision, has been widened.

Similarly, the subsequent articles of Chapter VII (mainly articles 42-48) have been interpreted in a loose and dynamic fashion, in order to facilitate peace-enforcement or collective self-defense. Resolution 678 authorizing the use of force during the Gulf War was not up to the strict standards of the Article 42 (no centralized UN command, no UN leadership, no accountability), but on the other hand, a rapid liberation of Kuwait became possible in accordance with the overarching collective security purposes of the UN Charter.

The difficult thing with an international intervention in support of humanitarian objectives (“humanitarian intervention”) is that it is actually related to three areas of international law:

It is related to the law on the use of force, because Article 2(4) of the UN Charter prohibits unilateral or multilateral force which is not in self-defense or sanctioned by the Security-Council;

It is related to the law on the human rights, because Articles 55-56 of the UN Charter oblige UN member states to co-operate in the protection of the human rights;

It is related to the law on collective security, because Chapter VII of the UN Charter permits collective enforcement action (including humanitarian intervention) when there is a threat to international peace and security, as defined by the Security Council.

In this regard, it is important to note the precedents established by the Security Council Resolution 794 authorizing “Operation Restore Hope” in Somalia, the follow-up Resolution 814 establishing UNOSOM II, and the various humanitarian enforcement mandates given to UNPROFOR in Bosnia during 1992 and 1993. The more shaky precedent of Resolution 688 leading to “Operation Provide Comfort” in Northern Iraq could be also mentioned. In this case no enforcement was authorized, although the repression of Kurds was seen as a threat to international peace and security.

If we look deeper into the history, Dag Hammarskjold tried during the Congo-Katanga crises to press for an interpretation of Article 2(7) that did not exclude humanitarian intervention. This was against the background of the massacres in South Casai in August 1960. According to some sources, “. . . Hammarskjold felt compelled to react to this development, because the UN could not stand aside in what he called a case of incipient genocide.”

“Prohibition against intervention in internal conflicts,” Hammarskjold cabled to New York, “can’t be considered to apply to senseless slaughter of civilians or fighting arising from tribal hostilities”. He thereafter authorized the interposing of UN troops, using force if necessary, to stop the massacres.

In the other words, Hammarskjold considered that, for the UN force, stopping or preventing large-scale violation of human rights and eventual genocide prevailed over the principles of non-intervention and non-use of force.

During the Cold War, justifications for intervention were not credible as they were put forward unilaterally by either one of the two superpowers (for example, the invasion of Czechoslovakia in 1968 or the intervention in Grenada in 1983).

After the Cold War, the collective dimension has made justifications more credible. Even if two members of the permanent five (P5) in the Security Council are generally against any kind of intervention eroding national sovereignty, UN authorized humanitarian intervention should, as a matter of principle, not be excluded as a standing option for the Security Council.

According to some international lawyers (Marrack Goulding, Ove Bring), the option of UN authorized humanitarian interventions should be pursued in discussions of the Security Council, as a consequence of the Kosovo crisis. This is in the interest not only UN, but also of the two P5 members (China and Russia) who currently oppose such action. The relevant innovative interpretations of the UN Charter that have been advanced so far – the widening of the concept of “threat to peace and security” to include humanitarian catastrophes and the narrowing down of the protection of national sovereignty through Article 2(7) – need to be reaffirmed.

Parallel with these developments there has been a trend challenging the scope of the veto power in the Security Council. Even back in 1982 the Independent Commission on Common Security (“the Palme Commission”) suggested a formula for territorial limitation of the veto, and since then numerous reports have recommended abolition of the veto right. These trends in the international community could be seen as a platform for customary law developments towards a more efficient protection of the integrity of humans at the expense of the sovereignty of states.

The Commission on Global Governance, co-chaired by the former Swedish Prime-Minister, Ingvar Carlsson and the Guyanan former Secretary-General of the Commonwealth, Shridath Ramphal, suggested in its Report of 1995 that the mandate for humanitarian intervention should be clearly stated in the Charter, which had to be amended in order not to widen the existing provisions through politically sensitive interpretations. The Commission thus proposed an amendment, permitting such intervention but restricting it to cases that constitute a violation of the security of people so gross and extreme that it requires an international response on humanitarian grounds.

The proposal on Charter amendment merits serious consideration, although many would argue that the political difficulties involved in such a formal approach would be overwhelming and that it would be better to rely on a development through state practice.

In this regard, it could be interesting to mention much-criticized policy-oriented New Heaven School of international law. The proponents of this school (McDougal, Feliciano and others) have criticized the strict, legalistic, positivist thinking of traditional lawyers, which they want to replace with political flexibility, policy expectations of the world community, and value orientation. The New Heaven school sees law as a process and not as a fixed, rigid system of rules. To use the terminology of this school, intervention to protect human rights is a value oriented approach in accordance with policy objectives linked to human dignity, and such intervention would thus meet widely held community expectations. Law and politics would be fused together. National interest would co-exist with universal value considerations. Power, in the form of the Security Council consensus and big power diplomacy, would be the ultimate basis for successful action.

With concepts like collective security and common security, international law had so far been too much centered around the security of states. Now it may be time for the world community to accept a concept of security of people, focusing on the situation of individuals and their possibilities of asking international bodies for help to protect their human rights against domestic threats of gross deprivation.

Regionalism vs. Universalism: Regional Action, NATO and Humanitarian Intervention

The challenge of the proliferation of new types of regional conflicts has been so overpowering that the United Nations has been stretched to the limit by the responsibility of finding solutions for complex emergencies. Consequently, pressure on regional organizations to assist, or even replace, the United Nations in handling some of the crises has risen, leading to a set of political, institutional and organizational issues. The situations in Liberia, Haiti, Croatia and its region of Eastern Slavonia, Tajikistan, Bosnia and Herzegovina, Cambodia, and Papua New Guinea have all provided clear message

that there is a need for the UN to develop partnership with regional organizations and/or arrangements in resolving complex emergencies, as envisaged by the UN Charter. The current situation makes possible and important to share the burden with regional and sub-regional organizations.

There are 16 regional organizations, which are cooperating or have shown interest in cooperating with the United Nations in peace-related activities. In terms of membership, among them three are regional, eight are sub-regional and five are inter-regional. Nine have observer status with the UN General Assembly. Five of them have established mechanisms for peace and security related issues, many of which are for preventive diplomacy, as well as peacekeeping and peace-making. Eight of them have developed or are in process of developing mechanisms for deploying peacekeeping operations either alone, or in conjunction with the UN.

As it was already mentioned, the UN Charter provides a role for regional organizations in the maintenance of the peace and security in their respective regions. In fact, Article 33(1) contains the provision that parties to any dispute endangering international peace and security, should seek a solution by resort to regional agencies or arrangements, as one of the peaceful means.

Concerning the enforcement action by regional organizations and/or arrangements, Article 51 of the UN Charter recognizes the inherent right of individual or collective self-defense, including the right to self-defense in a regional context. Article 53(1) states that the Security Council shall utilize such regional arrangements and agencies for enforcement action under its authority. However, it stipulates that no enforcement action should be taken by regional entities without the authorization of the Security Council. In addition to that, Article 54 provides that the Security Council shall at all times be kept fully informed of activities undertaken by regional arrangements for the maintenance of international peace and security.

If we look deeper into the origins of the UN Charter, Chapter VIII reflects a tension in the Charter system between universalism (the natural element of the system) and regionalism, which was specifically admitted on a San Francisco Conference under

the insistent pressure of Latin American diplomacy¹³. While the UN Charter was to let the universalism approach dominate in economic, social and cultural fields of co-operation, an exception was made in Charter VIII with regard to the security policy. Regional security arrangements were entitled as constructive peaceful settlement mechanisms.

But the ultimate question in San Francisco was to what extent existing or future regional arrangements should be subordinated to the universalistic decision making procedures of the Security Council. The Republic of China pushed for a rule requiring the Council to approve relevant regional arrangements in advance so as to ensure universalistic consistency, but the United States successfully resisted such far-reaching subordination.

Moreover, the concept of regional arrangements or agencies is not defined in the Chapter VIII and has in itself a dynamic potential for new interpretations in state practice. Regional organizations like the OSCE, OAS, OAU, The League of Arab States, the EU and ECOWAS are non-controversial, as is the Commonwealth of Independent States (CIS), being more an arrangement than an organization. NATO has always been a more controversial candidate for a regional agency in a Chapter VIII sense.

During the San Francisco Conference there was agreement that a military alliance (whether offensive or defensive in nature) was not per se a regional arrangement within the meaning of the UN Charter. Following the creation of NATO in 1949 delegates to the UN debated whether the new organisation as a defense alliance could be considered a regional agency¹⁴. The view was put forward that since NATO's dispersed membership amounted to a lack of geographical closeness as related to the Charter concepts of "regional action" and "local disputes", this could not be the case.

¹³ *The Act of Chapultepec had been adopted on March 8, 1945, in Mexico City and had laid the basis for Inter-American co-operation against aggression and other external threats.*

¹⁴ *The discussions took place within the Alliance itself. In the debate about the preamble to the Washington Treaty, France took the view that the pact was both a regional arrangement within the meaning of the UN Charter's Chapter VIII and collective defense system under Article 51. The British objected strongly to any reference to the Chapter VIII, fearing that all collective action taken should be subject to the veto of the Security Council. Finally, it was agreed to omit any written reference to the Chapter VIII and emphasize in public statements the relationship of the Alliance to the Article 51 but not the Chapter VIII or any other Articles of the UN Charter.*

The term "local disputes" is included in Article 52 paragraphs 2 and 3. The latter provision states, that the Security Council shall encourage the development of pacific settlement of local disputes through regional arrangements or agencies either on the initiative of the states concerned or by reference from the Security Council.

However, there is nothing in Article 52 that requires a regional organisation within the meaning of Chapter VIII to correspond to a geographical region of "territorial closeness". Nor is there anything that precludes members of such an organisation to define for themselves the object of its activities.

On the other hand, the territorial scope of regional activities under Chapter VIII, must, as a rule, be limited to action vis-à-vis member states of the regional arrangement. One exception will be the launching of a peacekeeping operation on the territory of a third state with the consent of that state. Besides that, only self-defense measures under Article 51 could be directed against third states. Since defense alliances are based upon the mandate of collective self-defense under Article 51, and are presumed to act against external threats and not intra-regionally, it could be argued that they do not belong under the system of Chapter VIII.

Hans Kelsen made this point in relation to NATO in his commentary on the law of the UN Charter in 1950. To him the obligations flowing from Article 5 of the NATO Treaty were incompatible with the normative system of Chapter VIII. An alliance could act towards external ("out of the region") aggression and had its legal basis in Chapter VII and Article 51, while a regional agency within the meaning of Chapter VIII and Article 52 had competence only with respect to intra-regional disputes.

Later the view was corrected (by Bowett in 1958), that any group of states is allowed to act within the framework of Chapter VIII as long as it has the sufficient capacity to maintain (and enforce) peace within a certain region. Such a functional approach would then radically diminish the need for a narrow specification of the term "regional agency". Whether an agency has an appropriate formal mandate in its constitutive treaty would be less relevant, the important thing would be that it could muster the political will and backing of its member states, as well as the military capacity needed to play a peace maintenance role in the region.

Thus, it is possible to conclude that NATO is a functional regional organization within the scope of Chapter VIII of the UN Charter. Nothing precludes any defense alliance from also functioning as a regional arrangement, although the membership may be characterized by certain trans-regional elements. In the case of NATO, the North Atlantic Area could also be seen as one region. Conversely, nothing precludes a regional agency from also functioning as a defense alliance. It cannot be argued that a regional arrangement must be open for all states of the region, since the members of any arrangement have the right to require the acceptance of common values. Regional organizations with the purpose of maintaining internal security (settlement of local disputes and protection of aggression from within the alliance), cannot be denied the right of also acting in collective self-defense against external aggression. Thus, given this possible mix of mandates, it is not a priori possible to exclude any defense alliance from the scope of Chapter VIII.

The former Secretary-General Boutros-Ghali pointed out in paragraph 61 of his “Agenda for Peace” that the Charter “deliberately provides no precise definition of regional arrangements and agencies, thus allowing useful flexibility for undertakings by a group of States to deal with a matter appropriate for regional action”. The existence of regional arrangements under Chapter VIII has to be determined from case to case (and not in accordance with a fixed formula), taking into account the evolving nature of international relations.

The Kosovo crisis has focused common attention on the opening wording of Article 53 of the UN Charter, stating that Security Council shall, where appropriate, utilize regional arrangements for enforcement action under its authority, but no enforcement action shall be taken under regional arrangements without the authorization of the Security Council.

In this regard, most international lawyers think that the NATO action against the Federal Republic of Yugoslavia (FRY) has been a violation of the UN Charter, and consequently of international law. NATO has implemented enforcement measures without the Security Council authorization referred to in Article 53. According to Antonio Cassese, by the nature, such violation is not a minor one: behind the disobedience to Article 53 lies a breach of the procedures of Chapter VII, and behind that

a breach of Article 2(4) on the non-use of force. Still, the international debate on the Kosovo crisis has shown that the attitudes taken towards the NATO action are not clear-cut. There are basically two approaches to this politico-legal dilemma:

One approach is very strict and condemns the violation of international law in strong language, like “an aggression against the sovereign state”. It considers Kosovo as a very dangerous precedent and defends the priority of principle of sovereignty over the protection of human rights.

The other approach to the NATO action is more flexible. Proponents of this view (such as Ove Bring) do not deny the violation of international legal procedure, but they put the use of force in the broader context and stress the need to help a minority against brutal state organized oppression. They note that, in the face of humanitarian catastrophe, there is a trend in the international community to accept non-authorized collective intervention at the expense of national sovereignty. As Carlsson and Ramphal signalled in 1995, the traditional emphasis on the security of states should be balanced against a new notion of security of people, i.e. security of individuals against their own government. The Boutros-Ghali in “an Agenda for Peace” conveyed the same message, as did the Security Council Resolution 688 (1991) on the protection of the Kurdish population in Northern Iraq. The ECOWAS intervention in Liberia in 1990 also took place without Security Council authorization but was later accepted and even praised by the Security Council (Resolution 788 of 19 November 1992).

Supporters of such approach are not prepared to condemn the NATO enforcement measures as "aggression", since the underlying purpose of these measures must be seen as strictly humanitarian. In this context it should be noted that the Security Council refused to label the NATO action as aggression when it on 26 March, 1999, rejected a Russian proposal to condemn the NATO bombings with 12 votes against 3¹⁵.

¹⁵ *The Russian proposal (UN Doc. S/1999/328) was sponsored by two non-members of the Security Council (Belarus and India). It was rejected (12-3) by Western and developing states (among them Argentina, Bahrain, Brazil, Gabon, Gambia and Malaysia). The two states voting along with Russia were China and Namibia.*

The Alliance itself made every effort to get as close to legality as possible by, first, linking its efforts to the Security Council resolutions which did exist, and, second, characterizing its action as an urgent measure to avert even greater humanitarian catastrophes in Kosovo, taken in a state of humanitarian necessity.

In the specific case of Kosovo, NATO Allies agreed that the use of force was legitimate to: ensure compliance with the demands of the international community; to end the humanitarian crisis and create the conditions for refugees to return to their homes; and to respond to the threat to regional peace and security.

And this was a correct decision: today NATO is at the core of the international force ensuring the security of all citizens of Kosovo - a force mandated by UNSC Resolution 1244. NATO is assisting the UN, the OSCE, and the EU in rebuilding the war-torn province.

In short, protecting the human rights, NATO protected everything the United Nations should represent. As the Secretary-General of the United Nations has said, "the rights and ideals the United Nations exists to protect, are those of peoples."

The lesson which can be drawn from this is that unfortunately there do occur "hard cases" in which terrible dilemmas must be faced and imperative political and moral considerations may leave little choice but to act outside the law. The more isolated these instances remain, the smaller will be their potential to erode the precepts of international law, in our case of the UN Charter. A potential boomerang effect of such breaches can never be excluded but this danger can at least be reduced by indicating the concrete circumstances that led to a decision ad hoc destined to remain singular. In this regard, NATO has done a rather convincing job.

On the other hand, the precedent that exists is one of collective humanitarian intervention conducted by a regional organisation after a process of collective decision-making, but not an unilateral intervention. Moreover, the precedent that exists is one of "non-passivity in humanitarian crisis". It reflects the fact that international law has to be related to political needs and international morality. It would be unthinkable to convey the message to a population in immediate danger of genocide, that "the international community is not able to help, it has to consider the risk of setting a precedent that could be misused in the future by rogue states".

Such passivity will conflict with the rationale of the UN Charter and *raison d'être* of the UN itself. A moral duty to intervene in the humanitarian crises, together with a duty to act, will create an option for regional organizations to act when the political will and military capacity are at hand, even if the Security Council is blocked by veto. As, during the Suez crisis in 1956, the Uniting for Peace precedent should be used to take the matter to the General Assembly in order to find UN approval outside the Security Council framework.

At the same time, together with very positive potential, concept of humanitarian intervention still contains hidden danger of being misused by some rogue states as a tool for an intervention in the internal affairs of the neighboring countries. Therefore, it's essential to accept internationally a clear set of rules and criteria for the humanitarian intervention. Any intervention in the absence of the Security Council authorization must be subject to certain strict conditions as part of an emerging doctrine on the subject. As some scholars (such as Ove Bring and Antonio Cassese) have indicated, list of requirements could include the following:

1. It has to be a case of gross human rights violations amounting to crimes against humanity;
2. All available peaceful settlement procedures must have been exhausted;
3. The Security Council must be unable or unwilling to stop the crimes against humanity;
4. The Government of the State where the atrocities take place must be unable or unwilling to rectify the situation;
5. The decision to take military action can only be made by a two-thirds majority of the General Assembly in accordance with the Uniting for Peace procedure, or by a regional organisation covered by Chapter VIII of the UN Charter, using the Uniting for Peace precedent to seek approval by the General Assembly as soon as possible;
6. The use of force must be proportional to the humanitarian issue at hand and in accordance with international humanitarian law of armed conflict;
7. The purpose of the humanitarian intervention must be strictly limiting to the stopping of the atrocities and the building of a new order of security of people in

the country in question. In this regard, of a special importance is establishment of possibly clear dividing line between the issues of territorial integrity and self-determination. While being very important as such, self-determination of ethnic minorities, leading to the formation of a new states, shouldn't be the final goal of humanitarian intervention. Instead, emphasis should be placed on the establishment of secure environment and creation of different forms of autonomies, guaranteeing protection of cultural, social, ethnic and racial rights within the borders of the existing state.

Should a doctrine of humanitarian intervention materialize in accordance with these lines, it would be a dramatic modification of the law of the UN Charter, making it more flexible and better tailored for the future challenges.

CHAPTER 3: FROM PEACEKEEPING TO STATE-BUILDING: NEW ROLE FOR NATO

Concept and Essential Elements of the State-Building

As it was analyzed in the previous Chapters, end of the Cold War and transition from the bi-polar to the multi-polar world had significant effect on a nature of the peacekeeping: scope and functions of the PKOs have dramatically extended and included tasks, unthinkable for the previous generation of the peacekeepers.

Another major development, influencing essence of peace support operations is ongoing process of globalization.

In a modern world with a process of globalization, leading to the unprecedented movement of goods, people, ideas, challenges and threats, countries are much more interdependent. Developed states, that have been able to capitalize on globalization, have created unparalleled prosperity within their own borders. Those states have realized that in order to continue improving world living conditions they need security and stability. Therefore, developed countries are naturally extremely concerned about maintaining a stable and secure world, by preventing conflicts or at least containing them as fast as possible. However, in countries where ethnic and cultural tensions have spanned hundreds of years, simply stopping the violence and unrest is not enough to secure a peaceful outcome and thus provide the foundation for creating a stable state. Once the violence has been contained, the mission of building a lasting peace must be put in place as soon as possible in an attempt to ensure that anarchy and disarray doesn't re-occur.

Traditional peacekeeping, with its narrow scope of objectives and functions is not suitable for this purpose. Such complex challenge sets on agenda necessity of a broader approach and transition from the peacekeeping to the state-building¹⁶, which is a new phenomenon.

The creation of a state is the culmination of a very long and difficult historical

¹⁶ For the purposes of the current research, term "state-building" will be used instead of more traditional expressions like "peace-building" or "nation-building". The term "state-building" is more appropriate, because it refers to a more complex process, than "peace-building" and describes desired end-product ("state") better, than phrase "nation-building" ("nation").

process that involves bringing together ethnic, historic, social, cultural, economic, religious, geographical and political factors. Maturing and combining all of them takes years, and in most cases can be measured in centuries. Today the post-conflict state-building process cannot take centuries to build. In a globalized world where most actions, regardless of the scope, are measured in days and months, nations involved in the peace process will not be willing to wait years for a result.

Therefore the end result of the state-building process has to occur as quickly as practicable. Nevertheless, state-building in the 21st century will still be a lengthy process. Conservative estimates range from 20 years to more than a generation. A co-ordinated, high intensity effort between the state in question and the international community is the only real way the natural historical process can be accelerated. Even with the help of the international community, it is a high-risk process wherein a mistake may deepen the conflict leading to serious and perhaps irreversible consequences.

Assuming the international community has a decisive role in a post-conflict state-building scenario, its efforts cannot cover the full spectrum of issues facing the country. However, recent experience has shown that high intensity and high profile external assistance is particularly effective at the very beginning of the process. This is the time when major state components are created, vital institutions are formed, and the foundation for further expansion is developed. If this process is completed correctly, follow-on state building should occur with less and less external involvement, as the firm foundation takes hold and the country begins to form its own identity. Assuming, therefore, that a cease-fire agreement is in effect and that there is a strong commitment both on the domestic side and the international community to bring the conflict to a final long-term resolution, the following major areas of international involvement and cooperation can be identified:

1. Physical Security, Law and Order: The creation of a secure environment is an essential element for all follow-on state-building measures. It sets up the conditions that should allow further negotiations leading to the creation of state institutions and the reconstruction of economic and social centers. As a minimum, initial security measures must include provision for protecting the local populace from external aggression, and lingering ethnic, religious, and racial strife that could flare up unannounced and hamper

the peace effort. Once the secure environment is achieved, arrangements can be made to repatriate refugees; furthermore, confidence-building measures between the former warring parties, between the international community and former combating parties, and the peacekeepers and the local populace can commence. Moreover, disarming, demobilizing and reintegrating the former combatants can begin. De-mining operations can be started and a neutral police force can be created;

2. Humanitarian Relief and Social Reconstruction: Once the initial security arrangements are in place, humanitarian assistance can proceed unimpeded, and the initial steps for the social reconstruction of the society can take place. Paramount to this effort is the establishment of a working and effective government. Whilst the final shape of the government may take years to develop as the community resolves its internal differences and seeks fair and just representation, other less controversial steps can be taken to support ongoing international social programs. Particularly important are the high visibility measures taken to aid the most afflicted groups by providing food, medical assistance, temporary housing, living supplements and finally education. Although social programs are easier to implement, they are expensive to execute and the international community must be willing to bear the initial setting up costs. The creation of hospitals, temporary housing, schools and relief centers cannot be developed without dedicated assistance from external organizations;

3. Government and NGOs: Once social programs are in place, the real work of state-building can begin, with the establishment of institutions that guarantee basic freedom of rights. The central government, in concert with provincial/state and local governments, must establish the legislative, judicial and executive branches of government. Along with the formation of these institutions is the process of setting up NGOs geared towards maintaining transparency within the system. Lastly, an effective police force needs to be set up and properly supported by the government and the local populace;

4. Elections: The process of organizing and administering free and fair elections is a monumental task; in particular, because it is a function that must be accessible to all willing citizens. It can be argued that the fundamental success of the state building strategies culminates in the establishment of free elections. Without proper supervision in

the initial phases everything created up to this point could be jeopardized if there is any suspicion that the process has not been handled in a fair and democratic way. NGOs and the international community need to monitor the election process very closely as there may only be one chance to get it right. Assistance in the election process should be targeted towards developing the political parties, integrating an international/national body of observers, and supporting the local authorities;

5. Economic Reconstruction: International investment companies look for stable political systems and respect for property rights in a country before investing large sums of money. At this point in the process, considerable progress should have been made and been recognized by the economic community and thus created a willingness to risk financial investment. Government, and NGOs should encourage local investments that not only create a broader job market but also improve the overall standard of living. Local businesses damaged by the conflict may require considerable economic assistance to rebuild their infrastructure. Lastly, former combatants and refugees may need considerable assistance to transition from warrior and victim to colleagues in the work place;

6. Human Rights: For the purpose of state-building the term “human rights” should be separated into two categories: the first includes the right to life, liberty, personal security, freedom from torture and slavery - the most basic, inalienable human rights. The other category includes secondary rights such as freedom of expression and freedom of association.

It is essential to recognize that throughout the entire state-building process the basic human rights of the individual must be preserved. The imposition of a cease-fire, the demobilization and disarming of combatants and the implementation of humanitarian relief will remove the primary causes of human rights abuse - the conflict and the combatants therein. Specific initiatives designed to relieve the abuse of other secondary human rights are best put into effect after the prior implementation of security, economic and social reconstruction measures. Any attempt to address the abuse of secondary human rights at an earlier stage is not only likely to be ineffective (since the appropriate mechanisms such as government or NGO agencies will not be adequately developed), but may also threaten to undermine the overall confidence in the peace process. It should

therefore be delayed until a robust and irreversible state-building process is underway.

To sum up, it is obvious, that complex nature of the state-building and broad variety of above-described tasks pose new challenges for the international actors, participating in this process. Such challenges cannot be met by any single state or organization and require multi-dimensional approach. Next part of the research represents an attempt to analyze possible division of labor between key international actors and find appropriate role for NATO.

Division of Labor Between Key International Actors: NATO Peacekeeping

As a result of all political processes, analyzed in the previous chapters, NATO has become involved in peace support operations and particularly, in the humanitarian intervention missions outside of its traditional role of “collective defense” defined by Article V of the Washington Treaty. In each case, NATO’s military forces have faced major challenges to their doctrine and pre-conflict training objectives. One of the main challenges that the Alliance has faced during its recent military interventions in the Balkans area has been the involvement of multiple organizations working alongside the NATO peace support activities.

In this regard, it should be stated from the very beginning, that NATO cannot act as a substitute for multi-dimensional international organizations such as the UN, the OSCE, the EU, the International Committee of the Red Cross (ICRC), or different NGOs. Not only is this not part of its primary mission, but also NATO lacks the resources to carry out the full spectrum of political, social and military aspects of peacekeeping and peace building. Therefore, NATO must cooperate with the international community in order to accomplish its mission successfully.

The spheres of co-operation and the level of interaction with other international actors will vary from mission to mission and will depend on the particular phase of the conflict. The division of roles between NATO, the UN, the EU and the OSCE will have to be clearly defined. This should not present an insurmountable problem as the UN and the OSCE are less equipped in operational and military terms.

The contribution of those key international players to the new security architecture within the Euro-Atlantic area might include:

1. The United Nations (UN): The UN will continue to be the primary international organization that authorizes international intervention and the use of force. In most cases the UN will have the overall responsibility for peacekeeping operations and will determine the desired end-state in any crisis. Due to the fact that it lacks own military capabilities and depends on contributions provided by single states or groups of states, it needs to subcontract the principal tasks in order to solve a crisis. That calls for cooperation, discipline and voluntary contribution from all the players. Putting aside political side of the question, arguably the most difficult practical challenge to face is the fact that there is a dual (civil-military) chain of command in the conflict zone. This remains one of the fundamental issues in cooperation among the main participants involved. Ideally, it would be desirable for the command of civilian and military operations to be under a single authority – a point often made by the senior management of the UN Missions in Bosnia (UNMIBH). Having said that, NATO’s military leaders have little confidence in the ability of the UN to operate military forces effectively in a zone of conflict. The experiences of UNPROFOR have shown quite clearly that subordinating coercive action by NATO to the United Nations is unmanageable and often leads to a worsening of problems rather than to a solution;

2. The Organization for Security and Co-operation in Europe (OSCE): The OSCE is a regional organization mainly designed to facilitate security throughout Europe by cooperation and by enhancing democratic structures. During conflicts its primary role is in the field of political development. Over the last decade the OSCE’s most significant contribution in the sphere of crisis management has been preparation and support in the organization and conduct of elections. Furthermore, the OSCE monitors human rights and facilitates the political dialogue between the former warring parties. Despite the legal possibility to conduct peacekeeping operations, it is less likely that this organization will be able to do so. More probable case is subcontracting, when the OSCE will use NATO assets to provide the “hard” security, while the OSCE itself will be focused on the “soft” security;

3. The European Union (EU): The EU currently plays a vital role in the

economic and political spheres of crisis management; moreover, it also supports social development. Once it achieves the “global crisis management capabilities” announced in Helsinki in 1999, the EU will impact significantly on future peacekeeping / state-building processes. Moreover, when that capability is realized, the current dual chain of command could be replaced by a single command authority such as the European Council. The development of the Common European Security and Defense Policy (CESDP) may make it possible to link the political, military and humanitarian components of crisis management in a way that will still inevitably be beyond the reach of NATO as a predominantly military organization;

4. Non-Governmental Organizations: The NGOs will certainly continue to follow their own agendas independently. In most cases they will have been working in the conflict areas from the beginning of a crisis; furthermore, some will stay in the area even after the conflict is resolved. Some NGOs have short-term working commitments, others support longer-term developments. Although basically independent, there are some umbrella organizations such as the UN office for the Co-ordination of Humanitarian Affairs (OCHA) and the UN High Commission for Refugees (UNHCR) which will support the co-operation and co-ordination within the NGO community. Those organizations should be the primary points of contact for NATO military forces;

5. NATO: As an Alliance of states with sound democratic constitutions and good humanitarian records, NATO is one such institution that must take a keen interest in not only maintaining the peace but helping to build peaceful states. The twin aims of any NATO military operation should be to end crisis rapidly and facilitate the establishment of a state structure that is secure and self-sustainable.

NATO peacekeeping, which is an off-shoot of second generation peacekeeping, requires different military skills, training methods and mind-set to that of conventional combat operations, and it can be difficult for the more traditional soldier to adapt to such a role. The skills involved in peace support (and particularly state-building) operations are a mixture of the military and the non-military; however, the important difference is in the underlying ethos or the mindset involved as acknowledged by Dag Hammarskjöld’s observation that “Peacekeeping is not a soldier’s job, but only a soldier can do it”. Despite the changing nature of peacekeeping, this statement is largely true today. There

are a number of important differences that exist between modern peace support operations and the combat operations with which NATO's military forces are more traditionally associated:

- Peace support operations have a different objective from combat operations – “success” replaces “victory” as the primary goal;
- Peacekeeping is normally an urgent response to an emergency situation that is difficult to plan or train for in such a way as NATO would do for combat operations;
- Peace support operations involving NATO's military forces will require civil-military co-operation, area that until recently military personnel have been unaccustomed to;
- The multinational nature of peacekeeping forces has implications for the successful co-ordination of command and control functions that are complicated by differences in language, doctrine and equipment.

The majority of military structures within NATO are not yet optimized for peacekeeping, and are much less structured to assist government agencies and NGOs with peace building. Moreover, some NATO countries' national laws restrict them from “interfering” in the internal affairs of another sovereign nation. However, in order to face future peace support challenges, all NATO countries should allocate sufficient funding to prepare their armed forces for peace support operations. If this does not happen, NATO will run the risk of not being able to gain the consensus of the Alliance as contributing members prepare their forces for tasks unrelated to their core functions. Since these tasks are potentially just as dangerous as war, and require the appropriate advanced levels of training, some nations may be unwilling to risk involvement in a country that poses no strategic threat to their well being.

Nevertheless, despite those problems there are some practical tasks in the field of state-building, which are primarily associated with the nature of the Alliance itself and where NATO involvement can be very valuable. Taking into account the complexity of a subject, the next part of the research will focus only on a limited number of those tasks (it is assumed that any conflict involving NATO's military forces in a peace support environment would be asymmetric in nature and would end favorably from the Alliance's perspective).

NATO Role in the State-Building: Providing the Security and Force Protection

Provision of collective security and, inherently, of force protection was one of the main objectives of Alliance's establishment. This is what NATO does best, and has for more than 50 years. Security is defined by NATO requirements as "The condition achieved when designated information, material, personnel, activities and installations are protected against espionage, sabotage, subversion and terrorism, as well as against loss or unauthorized disclosure." Thus, security and force protection in the context of a peace support operation is a guarantee of safety and freedom from danger to all stakeholders, be they NATO's military forces, governmental and non-governmental organizations or the civilian populace.

Recent events in Bosnia and Kosovo have shown that the Alliance is willing to become involved in peace support operations. NATO's long standing experience and training in coalition operations, together with its standardization agreements on procedures and interoperability of equipment make it well suited to the peacekeeping/state-building role. Adding to that the availability of infrastructure and communications, multi-national forces and well-established command and control structure, it's clear that NATO has a firm basis for conducting the numerous tasks involved in a PSOs.

There are some types of peace support operations that NATO's military forces are perhaps more appropriate than others. For example, NATO is ideally suited as a means of conflict prevention or deterrence. The desired effect of deterrence is to provide the stability that is needed for a prospective nation-state to transition from crisis to permanence. Deterrence can even have the effect of preventing conflicts from occurring in the first place. The air defense provided to UNPROFOR in 1995 is the example to above.

Peace enforcement or denial is another area where NATO forces can be logically and ideally employed in order to support agreed sanctions. Such sanctions could range from enforcing embargoes and blockades to establishing no-fly zones. This is particularly appropriate when there is a failure to respect cease-fire agreements or there is a necessity

to use all available military means to invoke compliance with any number of resolutions.

As a last resort NATO has the ability to impose a military solution to any potential conflict in order to restore and maintain peace and security of the North Atlantic, or even wider area.

NATO is less likely to become involved in traditional peacekeeping operations conducted by military forces operating within a UN Charter's Chapter VI context, i.e. once hostilities have ceased and there is a need to monitor the cease-fire agreement between the combatants. Certainly such missions will exist in the future and will require forces from many nations, including those belonging to NATO. It may be that NATO forces will hand off peacekeeping responsibility to such a transition force once a degree of stability has been achieved within the area of operations. This is a traditional peacekeeping function but it can apply equally during peace enforcement operations in the absence of any easily recognizable competent local authority. It is only in this latter instance that NATO should become involved in operations of this nature.

Making all above considerations, of course, it's out of question that the resources authorized for peacekeeping operations are crucial to the genuine success of the operation. Moreover, they have to be credible to realize the political objectives, which may be difficult to achieve in a strictly UN-led operation. However, with a NATO-led mission this should not pose a problem considering the means available. The prerequisite for trained, impartial personnel provided with adequate equipment should never be under-estimated or any PSO risks failure.

The type and mix of forces, be they military or civil will depend on the situation, but NATO is uniquely placed to command and control the deployment of a large scale force deployed in this role. An added advantage is the potential of deterring further aggression, with the knowledge that NATO can increase its response and move quickly into a peace enforcement operation if necessary.

Based on all above considerations, two general areas can be identified in the broad spectrum of NATO's role in providing security and force protection: traditional and non-traditional military tasks.

Concerning traditional military tasks, NATO possesses the capability to respond rapidly as a show-of-force to deter hostility and to prevent or at least lessen humanitarian

crises. Accordingly, NATO can be expected to play a part in the more non-traditional peace support operations, carried out under Chapter VII of the UN Charter. These “worst case” scenarios require the most capable combat forces NATO possesses. The conditions of employment will likely include a threat of violence from former (or still) warring factions and a disregard for cease-fire agreements. NGOs and humanitarian agencies (HAs) will likely have already deployed to the crisis area and will be heavily involved in relief operations.

NATO’s role would be to engage in those military activities required to end or prevent the resumption of hostilities and other threats to peace. A complementary and equally important objective would be to promote a secure climate for humanitarian relief, civil reconstruction and other state building activities. NATO would only do this with interaction and under the lead of relevant international and humanitarian agencies. NATO is a military organization and as such is best-suited for conducting military tasks and supporting its own troops. Therefore, all activities engaged in by NATO should complement but not duplicate NGO/HA operations.

Concerning the non-traditional military tasks, the following are examples of military activities other than traditional military tasks (including war fighting), that NATO military forces may be called upon to undertake in future PSOs:

1. Combating Terrorism: In most peace support operations terrorism is the main threat, not only to the military but also to the development of regional stability. Terrorists are basically non-combatants and therefore fighting them is primarily the responsibility of the civilian authorities. NATO’s military forces have to ensure that anti-terrorism measures (defensive measures taken to reduce vulnerability to terrorist acts) are taken to protect themselves, and to enhance the safety of the local populace. For counter-terrorism measures (offensive measures taken to prevent, deter, respond to and eliminate terrorism) specialized as well as special forces must be available. They will plan, prepare and execute operations in close co-operation with the appropriate civil authorities;

2. Maritime Intercept Operations and Enforcement of Sanctions: NATO’s military forces could be involved in operations which use coercive measures to interdict the movement of certain types of designated items into or out of a state or specified area. These operations are normally exclusively military in nature but serve both political and

military purposes. The political aim is to compel a country or group to conform to the objectives of the initiating body (usually, the UN), whereas the military aim is to establish a barrier that is selective, allowing only authorized goods to enter or exit. Depending on the geography of the region, sanction enforcement normally involves some combination of air and surface forces. NATO assigned forces should be capable of complementary mutual support and have fully compatible communications equipment. A recent example involving NATO's military forces is the monitoring of the enforcement of the arms embargo and the economic sanctions against the former Yugoslavia in the Adriatic (Operation Sharp Guard);

3. Enforcing Exclusion Zones: NATO military forces would be utilized to establish an exclusion zone to prohibit specified activities in a specific geographic area. That zone(s) could be established in the air for example the "No-Fly Zone" over Bosnia-Herzegovina (Operation Deny Flight), over the sea (maritime), or on land. Moreover, the purpose could be to persuade nations or groups to change their behavior patterns to conform with the NATO military objectives under the relevant political mandate. Alternatively, they could face the continued imposition of sanctions, or the threat and ultimate use of force;

4. Ensuring Freedom of Navigation and Over-flight: NATO's military role in these operations would be to mount escort missions, open maritime or air corridors and to intercept hostile units. They are conducted to demonstrate international rights to navigate sea or air routes. Freedom of navigation is a sovereign right under international law;

5. Assistance to Nations / Support to Counterinsurgency: NATO's military forces could be used to provide assistance (other than HA) to either the military or the civilian arm of a particular nation(s) within its sovereign territory, either during peacetime, crisis or times of conflict. The goal is to promote long-term regional stability by promoting sustainable development and growth of responsive institutions;

6. Arms Control: Arms control is a concept that connotes any plan, arrangement, or process, resting upon explicit or implicit international agreement. Arms control governs any aspect of the numbers, types, and performance characteristics of weapon systems (including the command and control, logistic support arrangements, and any related intelligence gathering mechanism), also the numerical strength, organization,

equipment, deployment or employment of the armed forces retained by the parties (it encompasses disarmament).

Involvement of NATO military forces could include verification measures under different arms control treaties, such as site inspections, seizing nuclear, biological, chemical or conventional weapons, escorting movements of weapons and ammunition, also dismantling, destroying and disposing of weapons and hazardous material.

NATO could be faced with the disarmament of warring factions, establishing and monitoring security zones and, if necessary, engaging in those military actions necessary to maintain control and peaceful conditions;

7. NATO Co-operation in De-mining Operations: NATO's military forces may be called upon to begin the process of de-mining and clearance of other UXOs. Whenever practical, the responsibility for conducting, supervising or supporting mine clearing operations and explosive ordinance detonation will rest with those who laid the mines originally. This may not always be possible and the task could fall to the NATO military. Mine clearing by the military will concentrate on clearing locations and lines of communications to support the process of rehabilitation at the very beginning of the post conflict period. However, there are a number of independent organizations that specialize in mine clearing operations and a hand-over should be affected as soon as the security situation allows, but always under the auspices of the military authorities.

Furthermore, NATO's military forces could be called upon to run de-mining training courses within their area of operations in order to ensure that the safety of the individual remains paramount. In addition, information flow to such areas must be continuous and a mine awareness campaign to educate the populace should be started as soon as possible in order to guard their safety. It is especially important that children are made aware of the dangers of mines.

However, NATO's military forces would not normally have the capacity to carry out de-mining on a large scale covering the whole area of operations. The task of de-mining is likely to take a very long time. Therefore, co-operation and co-ordination between the NATO's military forces and the international organizations undertaking mine-clearance tasks and other UNXOs will be a fundamental issue.

NATO Role in the State-Building: Civil-Military Co-operation

NATO's Strategic Concept clearly states that "The interaction between the Alliance and the civil environment (both governmental and non - governmental) in which they operate is crucial to the success of operations. Civil-military co-operation is interdependent: military means are increasingly requested to assist civil authorities; at the same time civil support to military operations is important for logistics, communications, medical support, and public affairs. Co-operation between the Alliance's military and civil bodies will accordingly remain essential." CIMIC has already proven its effectiveness in difficult peace support missions. A recent report on CIMIC's success in Kosovo evaluated the CIMIC military action as an important interface between KFOR and the population and the local authorities on the one hand and between KFOR and the international organizations (governmental and non-governmental) on the other. Therefore, the Serb or Albanian who wants to know the status of mine clearing operations in his particular village, or how to obtain building materials for his house, or the prospects for re-opening the school for his children will know where to find the information. Similarly, there are CIMIC liaison officers in each United Nations Mission (UNMIC) regional or local delegation to ensure that action by civilian and military agencies is coordinated.

NATO CIMIC is able to co-operate with international organizations using various mechanisms such as meetings of Principals and other liaison/coordination activities in order to obtain the machinery for effective co-ordination with the civilian population and civilian organizations, such as the ICRC, the UNHCR, International Organization for Migrations (IOM) and the World Food Program.

Although CIMIC is a viable tool for NATO to work with civilian organizations, it is a challenging arena because there is still a great deal of suspicion and wariness on both sides as to the effectiveness of their partnership. A recent report affirmed that "At the local level, coordination/cooperation was established initially under emergency conditions with a certain amount of tension at the outset due, on the one hand, to difference in culture between the military and the humanitarian workers and, on the other, to the humanitarian organizations' fear that their impartiality or their neutrality would be

compromised by cooperation with the armed forces”.

Practical co-ordination on a day-to-day basis remains another problem area. Once a cease-fire agreement has been reached, this problem becomes the primary one, even if the ethical issues do not disappear completely. That is the main reason why the Principals’ meetings and the meetings between NATO and the representatives of International Organizations, have become one of the key elements in the coordination process. Indeed these meetings have made it possible to minimize the impact of the subdivision of civilian action, particular in Bosnia, where responsibilities are still very fragmented in spite of the progressive increase in the power of the High Representative.

Another challenge that has only recently been recognized is the requirement for CIMIC co-ordination at the strategic level. For peacekeeping/state-building operations in the future, it is vitally important that the planning process is extended to include both NATO’s planning authorities and the international organizations (including humanitarian agencies/NGOs) working together in close co-operation. A working relationship between both the civil and the military personnel involved in conflict management should be developed as early as possible, and ideally before a conflict arises. Not surprisingly, OCHA now has a permanent liaison officer within the NATO Headquarters in Brussels, working closely with the CEP Directorate. In addition, the Alliance military are studying procedures for joint operations planning on the basis of experience of the close collaboration established between SHAPE and major humanitarian organizations (UNHCR, OCHA, ICRC, IOM, etc.) in Kosovo.

NATO Role in the State-Building: Logistic Support and Co-operation

NATO co-operation in the field of logistics should focus both on providing assistance to those civilian agencies for which humanitarian activities are the principal function, and by helping to co-ordinate activities in support of economic rehabilitation and reconstruction. NATO’s forces have the capability to make a significant contribution to the humanitarian relief effort. Those forces are able to administer support at the port/airport of entry to the conflict area by off-loading cargo and providing temporary storage facilities, as well as assisting with the co-ordination and movement of the cargo

to its ultimate destination. Nevertheless, some of the humanitarian agencies do have their own logistical capabilities such as the reception and onward movement of their aid cargo, setting up of refugee camps, moving refugees from country to country on a temporary basis, and providing information regarding numbers and locations of internally displaced persons.

Many of the current challenges facing NATO's military forces in the field of logistics as part of the peacekeeping/state-building process will continue to be prominent in the future. The vital forms of support such as the creation of a more secure environment, direct defense of humanitarian assets and personnel, and humanitarian support activities are covered separately. The critically important logistical problem area of food is worthy of special mention: food is a bulky and perishable commodity that requires expert management to be transported and stored successfully. For example, when large numbers of displaced persons are repatriated, the provision of food becomes a major problem. If the local authorities (including the NGOs/humanitarian agencies) are unable to cope with the situation, NATO's military forces could be responsible for co-ordinating the provision and distribution of emergency rations on a temporary basis. This can be achieved in a number of ways such as by opening feeding stations centers preferably using local labor assisted by aid agencies, although NATO forces may have to play an active role.

NATO Role in the State-Building: Post Conflict Actions in a Social Sphere

The first most important post-conflict step would be the crucial task of gaining the trust and co-operation of all the former warring parties. Numerous initiatives, primarily diplomatic in nature, should be taken as soon as possible. Strengthening and rebuilding civil infrastructure in order to avoid a return to conflict, introduction of measures to support economic reconstruction and other mechanisms that build confidence and foster the well-being of the local populace are essential. Involvement of both the military and the NGOs is normally required at this early stage. Follow-on state-building activities include restoring the control of the civilian authorities, rebuilding physical infrastructures, also reestablishing schools, and medical facilities.

It is obvious that urgent medical care, primarily life-saving care, would be a vital element of any NATO military operation in the peacekeeping/state-building role. Fortunately NATO nations are generally very adept at planning and providing the appropriate medical support for their particular military operation. However, in multinational peacekeeping operations, the provision of medical care to other contributing nations as well as the host nation should be addressed during the early stages in the planning process.

With adequate pre-planning, NATO's military forces would be better equipped to face the demanding challenges that peacekeeping missions pose to the Alliance. An example of providing reciprocal agreements for medical care is "Role II" in Kosovo. Under this provision one nation has agreed to rescue injured troops from another country, and to provide the necessary life saving first-aid (including surgery if required).

However, irrespective of the level of medical support authorized, the aim should not be to replace a civilian capability that is able to offer the same services. The host nation has to realize that as soon as it can take over the medical support in a particular region then it must do so. If it does not, the host nation will run the risk of becoming dependent on a service that was never intended to be permanent; moreover, NATO's forces would be faced with the significant financial and manpower penalties involved with mounting such an operation for an open-ended period of time.

Some of the medical planning considerations that should be incorporated into the planning phase of a NATO military operation in the peacekeeping role might be urgent medical care in cases of life and death, minor medical emergencies (on a not to interfere basis), dispensing prescription drugs and medical consultations.

Similar to NATO's involvement in medical support operations, the Alliance may be called upon to restore certain civilian infrastructures. These operations must be limited in scope and always related to the military situation at hand. Large-scale operations should be avoided, unless they relate directly to the NATO operation. Even in this case, civilian enterprises should be contracted by the Alliance, and should be called upon to do the bulk of the work. The following military tasks could be assumed by NATO's military forces:

- Repairing damaged bridges;

- Restoring means of transportation (airports, roads, and railways);
- Renovating buildings necessary for the conduct of official state affairs (schools, hospitals, etc.);
- Rebuilding city water and sewage plants.

There are numerous other small tasks that NATO military forces could be called upon to undertake within the scope of CIMIC operations. However, as a general rule, NATO should avoid additional tasking outside of its mandate because of the additional commitment of resources, manpower and money that are required to sustain such operations.

One of the major aspects of NATO's participation in a state-building process is connected with a protection of human rights – an essential condition if NATO is committed to facilitating the building of a peaceful, secure and stable state. NATO countries are renowned for their record of upholding the values associated with human rights. The military as an extension of NATO's political policy, is in a perfect position to promote human rights. It is understood that the realization of human rights is a process which needs teaching and education in order to promote respect for people's individual rights and their freedom. By virtue of the fact that NATO's military forces will almost always be on scene from the onset of any mandated peacekeeping operations involving the Alliance, it is logical that the first step in educating the state in question should be initiated by its military forces.

The following principles of military operations, regardless of the mission, influence the realization of human rights:

- Military operations are determined by the impartial but consequent attitude of peacekeepers. This is mandatory in order to ensure inter alia the equality in dignity and right before the law;
- Military operations are designed to end any kind of violence, fight misuse of power and to facilitate the rule of law. This helps to ensure that everyone has the right to life, liberty, security of person and will not be subjected to arbitrary interference and will be protected by the law. The military has only limited capabilities to enforce law actively because this is a typical police mission;

- Military operations must execute a political mandate. One of the major aspects is the guideline regarding the conflict between self-determination and sovereignty. As everyone has the right to a nationality, there is a need to clarify the common goal, especially in multi-ethnic societies (this question was covered in more details in the previous Chapter of the research);
- Military operations have to follow commonly agreed basic laws. The right to own property, the freedom of thought and the right to freedom of peaceful assembly can best be facilitated by ensuring the rule of law and providing security.

NATO's military force would not be the only responsible organization for the establishment and maintenance of human rights. Therefore, co-operation and co-ordination with many other institutions will be of utmost importance. The complex framework of peacekeeping operations must be directed towards a common goal, and NATO's shared values would seem to be a good starting point.

CONCLUSIONS

1. Peace support operations (PSOs) have been an instrument of foreign and security policy since the early 19th century, but have gained real importance, legitimacy and institutional basis with the end of the Second World War, after the establishment of the United Nations. Peacekeeping, as such, is not clearly defined in the Charter of the United Nations, but is a practical mechanism designed for containment of armed conflicts and facilitation of their resolution by peaceful means. It represents result of flexible and dynamic interpretation of the UN Charter, in order to meet political needs of the world community;
2. From the very beginning, the UN Charter has been being interpreted by the member-states. Although it is an excellent document, the Charter can't accommodate all aspects of action, necessary for the resolution of conflicts and disputes. In these areas there was and still is a need for supplementary norms of modifications based upon the practice of the UN and its members. Thus, search and introduction of innovative solutions is a positive development corresponding to the spirit of the UN Charter;
3. Transition from the bi-polar to the multi-polar world and transformation of the nature of modern conflicts sets on agenda necessity of further innovative interpretation of the UN Charter. Development of the next generation of peace support operations leads to the unavoidable revision of some principles, designed for the traditional peacekeeping. Most importantly, such revision concerns fundamental principles of impartiality and consent. In case of internal conflicts standing for these requirements may give certain degree of international legacy to secessionist groups and other non-state actors. As a result, peacekeeping operation could be used by those groups for the prolongation of the existing situation and "freezing" of the status quo. Therefore, in case of internal conflicts peacekeeping should be used only as a part of a broader approach and be in a package with active diplomatic/political efforts to move towards conflict resolution;
4. Another option is to use enforcement mandate, not requiring consent of the parties consent. Recently emerged concept of humanitarian intervention provides an opportunity to get involved in the internal matters of a state in case of clear picture of

massive violation of human rights and gross deprivation of the people, leading to the emergence of the threat to the international peace and security. At the same time, together with very positive potential, concept of humanitarian intervention contains hidden danger of being misused by some rogue states as a tool for an intervention in the internal affairs of the neighboring countries. Therefore, it's essential to accept internationally a clear set of rules and criteria for the humanitarian intervention. Intervention should take place only if and when all criteria are satisfied;

5. The purpose of the humanitarian intervention must be strictly limiting to the stopping of the atrocities and the building of a new order of security of people in the country in question. Of a special importance is establishment of possibly clear dividing line between the issues of territorial integrity and self-determination. While being very important as such, self-determination of ethnic minorities, leading to the formation of a new states, shouldn't be the final goal of humanitarian intervention. Instead, emphasis should be placed on the establishment of secure environment and creation of different forms of autonomies, guaranteeing protection of cultural, social, ethnic and racial rights within the borders of the existing state;
6. Main actors in the field of humanitarian intervention should be regional organizations, willing and able to constitute to the maintenance of the international peace and security. Implementation of large-scale enforcement mandates goes beyond the UN capabilities. Therefore, the way ahead is delegation of more responsibilities to regional structures and setting up of an effective division of labor;
7. As a rule, authorization for the enforcement mandate should come from the United Nations. However, in exceptional cases, when there is a clear picture of humanitarian catastrophe, posing major threat to the international peace and security and all norms/criteria of humanitarian intervention are clearly satisfied, humanitarian action may be initiated by relevant regional agencies without primary authorization from the UN Security Council. For such cases, the Uniting for Peace precedent could be used to take the matter to the General Assembly in order to find UN approval outside the Security Council framework;
8. Such possibility will significantly reduce veto power of the permanent members of the UN Security Council, increasing therefore flexibility and efficiency of the United

Nations itself. This will push permanent members to be more active, flexible and realistic in dealing with intra-state conflicts. While being the principal international actor in the field of the international peace and security, the United Nations has to be transformed to meet current challenges more effectively. The UN should be on a front line of events but not at the back. Today, due to its global and inflexible structure, the UN often stalls or even blocks actions, obviously necessary for the maintenance of international peace and security;

9. In order to increase UN efficiency, 2 permanent members of the Security Council (China, Russia) have to re-assess their approach vis-à-vis international involvement in intra-state affairs. Until such re-assessment takes place, the UN will remain very reluctant and inflexible in addressing threats to international peace and security, posed by intra-state conflicts. Such inflexibility from one hand and the obvious necessity to act from the other, will always “push” one or another regional organization, vitally interested in the resolution of conflict and able to do so, to act even without the primary authorization from the UN;
10. Modern threats/conflict can't be managed by any single international organization. Therefore, it's essential to work out most favorable division of labor. In its relations with other international actors, NATO should use comparative advantages of each of them. For the Euro-Atlantic area, NATO could provide “hard” security (military component, power projection), OSCE could provide “soft” security (preventive diplomacy, post-conflict rehabilitation, promotion of democratic institutions) and EU could provide economic and social rehabilitation. As a rule, all mentioned activities should take place under the UN authorization;
11. In a modern world with a process of globalization, leading to the unprecedented movement of goods, people, ideas, challenges and threats, countries are much more interdependent. Developed states are naturally extremely concerned about maintaining a stable and secure world, by preventing conflicts or at least containing them as fast as possible. However, in countries where ethnic and cultural tensions have spanned hundreds of years, simply stopping the violence and unrest is not enough to secure a peaceful outcome and thus provide the foundation for creating a stable state. Peacekeeping, with its narrow scope of objectives and functions is not

suitable for this purpose. Such complex challenge sets on agenda necessity of a broader approach and transition from the peacekeeping to the state-building;

12. The change in threat perceptions following the end of the Cold War has led to different types of missions being undertaken by NATO's military forces. Although the more traditional collective defense role remains a major priority for the Alliance, NATO military forces will have to adjust to meet the challenges of crisis management; in particular, the peacekeeping and state-building roles. NATO, both politically and as a military organization, will have to decide to what extent these new roles will influence or change its capability to conduct an Article V operation. It is a question of how much time, effort and financial resources as well as manpower is NATO prepared to allocate to the peacekeeping/state-building role;
13. The vital pre-requisite of any successful contribution by NATO's military forces in the peacekeeping/state-building role will be a clear mandate. The mandate should define the principal political, economic and social goals, which in turn will provide the basis for NATO commanders to determine the military end-state;
14. NATO could restrict its contribution in the peacekeeping/state-building role to purely military operations and concentrate exclusively on providing physical security. If that were the case, the tasks would be very similar to those that are traditional to the Alliance. However, limiting NATO military forces exclusively to military operations would limit its capabilities to contribute effectively to conflict management, and would neither be appropriate or adequate to meet the future challenges;
15. Assuming, that NATO is willing to play a major role in crisis management operations, its most important function still will be to provide physical security and thus create a stable situation. Of all the institutions and organisations likely to be involved in a particular operation, NATO would have to be committed from the start, as in most cases the international contribution to conflict solution will commence with the deployment of military forces. Consequently, it is the military forces that are usually obliged to assume the overall responsibility for controlling the operation during the early stages. The transfer of control and responsibilities to the civilian authorities can be a slow process. For as long as it is only the military that has the available reactionary forces, it will have to undertake a number of traditionally

civilian tasks during the conflict resolution phase. If NATO is to gain optimum success in the peacekeeping/state-building role, it cannot avoid establishing as a minimum the necessary capability to cover the transition phase;

16. The only real way to ensure that NATO's military forces are able to meet all the challenges likely to be posed by future peacekeeping/state-building missions would be to add a new dimension to its current capabilities. The crucial task of ensuring internal security and stability by enforcing law and order and, at the same time, helping to institute a reliable administration, is well beyond the military capabilities and requirements of the more traditional war for which NATO is currently trained and equipped. Therefore, the creation of some kind of specialized reserve forces for use in the peacekeeping role to complement the existing military forces may well be the answer to the problem. The structure of current reserve forces would have to be modified and such an initiative would inevitably have to be sanctioned politically and militarily as there would undoubtedly be significant additional costs, particularly in the initial setting-up phase;
17. Once the initial task of providing security through traditional military means is completed, NATO military forces will be faced with the different facet of "policing" that security. This kind of operation will eventually become a civilian mission after a transition phase. However, the availability of trained forces already familiar with the policing role such as the Carabinieri, the Gendarmerie or the Guardia Civil would improve the situation markedly;
18. Dealing with the civil organizations will continue to present a major challenge to NATO military forces in the peacekeeping/state-building role. Although major progress has been made in this sphere, there is still much work to be done. The working environment has and will continue to change dramatically for those military leaders and their staffs who find themselves involved in PSO for the first time. In particular, the leadership must be prepared and willing to answer questions on traditionally unfamiliar subjects at any time and in great detail. Therefore, the working level staffs will be faced with having to process and analyze different kinds of information from that found in normal military operations, and make it available to the commander as quickly as possible to ensure that openness, impartiality and above

all, credibility is maintained;

19. The interaction between the Alliance and the civil environment is crucial to the success of any peace support operation. Broad spectrum of tasks posed by the state-building process from one hand, and multi-dimensional approach to the crises management, leading to a large number of international institutions involved from the other, make CIMIC an essential tool for NATO. In this field, efforts should be geared towards the minimization of the impact of subdivision of civilian action. Moreover, a co-ordination at the strategic level is crucially important – planning process should include both NATO's planning authorities and international organizations. A working relationship between both the civil and military personnel included in the conflict management should be developed as early as possible;
20. NATO co-operation in the field of logistics should focus both on providing assistance to those civilian agencies for which humanitarian activities are the principal function, and by helping to co-ordinate activities in support of economic rehabilitation and reconstruction. The vital forms of support might be the creation of a more secure environment, direct defense of humanitarian assets and personnel, and humanitarian support activities. Of a special notice is the crucially important logistical area of food, which may need special separate considerations;
21. The first most important post-conflict step would be the crucial task of gaining the trust and co-operation of all the former warring parties. Numerous initiatives, primarily diplomatic in nature, should be taken as soon as possible. Strengthening and rebuilding civil infrastructure in order to avoid a return to conflict, introduction of measures to support economic reconstruction and other mechanisms that build confidence and foster the well-being of the local populace are essential. For NATO forces, such initiatives might include involvement in medical support operations and restoration of civilian infrastructure. However, irrespective of the level of authorized support, the aim should not be to replace a civilian capability that is able to offer the same services. As a rule, NATO should avoid additional tasking outside of its mandate because of the additional commitment of resources, manpower and money that are required to sustain such operations;
22. An effective leadership and specialized command and control arrangements are both

vital for the effective employment of military forces in modern peacekeeping/state-building missions. Mobile headquarter systems with key nucleus staffs at high levels of readiness (CJTF concept) will underpin NATO's military operations in the future, be they the more traditional war-fighting or out of area peacekeeping operations. The capability to plan for and to execute the whole spectrum of crisis management operations will give NATO another important string to its bow;

23. And finally, in an increasingly interdependent world, there are still too many conflicts, causing mass killings, gross violations of the human rights and humanitarian crises. Therefore, promotion of peace and justice through collective action remains a relevant and urgent task. For this purpose, peace support operations remain the most valuable international mechanism for containing and resolving conflicts and building states, capable of becoming worthy members of the world community.

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